correct method of commencing the proceedings. Though the lighter workers referred to might be said to be employed under a contract of service, the provisions of r. 5 of O. 52 were not applicable because the plaintiffs were not parties to any such contract and the provisions of r. 5 can only be invoked where a contract is in question by the parties to the contract. Nowhere in O. 52 was provision made for proceedings such as these to be commenced by Originating Summons. O. 26 r. 5 permits the making of a declaratory judgment, but this could only apply in a matter such as this if it had been commenced by the issue of a writ. He submitted that the subject matter of this Originating Summons was not covered by O. 52 nor was any statutory provision applicable and accordingly the Court had no jurisdiction.

Mr. Massie for the plaintiffs stated that he did not rely on O. 26 but was relying first of all on the provisions of rules 13 and 14 of O. 51, and in particular to rule 14(1)(j), and also on O. 54A r. 1A in the Annual Practice. He contended that from the wording of rule 13 and rule 14, and in particular rule 14(1)(j), by inference the Court had jurisdiction to hear applications by Originating Summons for the determination of any question of law. He added that the present application was not only a question of law but also a question of the construction of a statute, and it was also covered by O. 54A r. 1A in the Annual Practice, it being the established practice in this Court to utilise the Annual Practice when the provisions of the local rules did not cover a particular point.

Whether or not such is the established practice of this Court, O. 54A r. 1A of the Annual Practice cannot, I think, apply because in my opinion this is not a question of the construction of a statute, the definition of the word "employee" in the Employees Provident Fund Ordinance, 1951, being reasonably clear, but a question of the application of the facts of this particular case to that definition. However I think that in view of the Privy Council decision in *Short v. Henderson*[1] there can be little doubt that the question is a question of law.

Mr. Massie further argued that when the Originating Summons was first issued the defendant did not object and took no steps to have it set aside. In fact the defendant entered appearance to the Originating Summons and counter affidavits were filed. He submitted therefore that the defendant had waived any right to object to the Originating Summons, and in support quoted *S. Rm. Raman Chettiar v. Soh Bek Neo*[2], which was a Court of Appeal case. In that case however the proceedings had been properly commenced by Originating Summons but there had been a procedural error after the issue of the Summons and it was this error which was held to have been waived. In the present matter it is Mr. Brash's submission that the Originating Summons is bad and that the matter has not been brought before the Court at all.

I do not think that the present case is covered by O. 52, and there is no statute applicable to cover the use of an Originating Summons in circumstances such as these, and accordingly it remains to be decided whether the contention that by inference from rule 14(1)(j) of O. 51 this is a matter which can be started by Originating Summons is correct.

On perusing O. 51 I think it is clear that that Order deals with applications in chambers and summonses in chambers. These summonses in chambers may or may not be Originating Summonses. These summonses may be summonses in a matter which has been commenced by writ. This being so no inference can be drawn from rule 14(1)(j) of O. 51 that the subject matter of this application can be started by Originating Summons. As there is nothing in O. 52 which provides for the issue of an Originating Summons in the circumstances of this case, and as there is no statutory provision applicable, there is no jurisdiction at all in this case, and where there is no jurisdiction jurisdiction cannot be conferred by the parties.

I therefore make no order on the Summons.

This being the case I am not called upon to decide the further point as to whether the plaintiffs are entitled to ask for a declaration determining this question.

No order.

Solicitors: *Allen & Gledhill.*

X v. COMPTROLLER OF INCOME TAX

[A. C. J. (Chua J.) August 22, 1957]

[Singapore — District Court Appeal No. 8 of 1956]

Income Tax — Taxpayer's deduction of bad debt — Income Tax Ordinance (Cap. 166) s. 14(1)(d) — Custom of borrowing and lending money among building contractors as activity ancillary to business — Whether such "reciprocal arrangements" are essentially necessary to business — Loss of capital.

The appellant carried on the business of a building contractor. During the course of his business he borrowed and lent large sums of money without security. In this case the appellant agreed and lent a sum of $100,000 to one F without security. F was subsequently adjudicated bankrupt. The appellant considered that the $100,000 lent to F was a total loss and sought to deduct for the purposes of paying the income tax the sum of $50,000 (being half of the $100,000 lent to F; the other $50,000

he sought to deduct from the 1953 profits) from his 1952 profits. He contended that there is a practice or custom among building contractors of borrowing and lending money not for profit but as an activity ancillary to their own business.

Held: (1) the loan made by the appellant to F was not an essential part of his business nor was it essentially necessary to his business and was not an outgoing or expense wholly and exclusively incurred in the production of income for the business;

(2) on the evidence there was no such practice or custom among building contractors of borrowing and lending money.

Case referred to:—

(1) *Reids Brewery Co. Ltd. v. Male* (1891) 2 Q.B. 1.

DISTRICT COURT APPEAL.

A. L. Hills for the appellant.

A. V. Winslow (Solicitor General) for the respondent.

Chua J.: —This is an appeal by the Taxpayer against the decision of the Board of Review in which the Board disallowed the deduction of $50,000, being part of a loan made by the appellant to a Mr. Fu, as a bad debt.

The Board of Review decided that the loan "was not an essential part of the appellant's business, that it was not essentially necessary to the business and that it is not an outgoing or expense wholly and exclusively incurred in the production of income for the business". In the opinion of the Board the loss was a loss of capital.

The following facts are agreed:

The appellant is a building contractor. In January 1951 the appellant required the sum of $145,000 to deposit with the Government of the Federation of Malaya in order to take up a building contract. That same month the appellant approached his Bankers, the Chung Khiaw Bank, Singapore, North Branch, for a loan which was refused. However, the Manager of the North Branch said that he could put the appellant in touch with another customer of the Bank, who had a large credit balance, and it was agreed between them that if the appellant succeeded in getting the loan then the appellant would at a later date himself make similar loans to other third parties introduced by the Manager. The man introduced by the Manager lent the appellant the sum of $100,000 without any security. With that money the appellant paid the deposit and was able to take up the contract.

In December 1951 the appellant, who then had a large credit balance with the Chung Khiaw Bank, North Branch, as a result of the progress payments received from the Federation contract, was approached by the same Manager to lend to a Mr. Fu the sum of $100,000 and he was reminded of the agreement made in January 1951. The appellant agreed and a loan of $100,000 was made to Mr. Fu without security. At that time Mr. Fu was unknown to the appellant. It was subsequently discovered that Mr. Fu was an employee in the same North Branch of the Bank and that he had lent the $100,000 to a Mr. Mah Kong. Mr. Fu gave the appellant postdated cheques by way of repayment which were dishonoured. Mr. Fu and Mr. Mah Kong became bankrupt. There is no likelihood of any dividend being paid in the bankruptcy of Mr. Fu.

The appellant considers the $100,000 lent to Mr. Fu to be a total loss and he now seeks to deduct $50,000 (being half of the $100,000 lent to Mr. Fu; the other $50,000 the appellant will seek to deduct from the 1953 profits) from his 1952 profits.

Mr. Hills for the appellant contends that the loan in January 1951 made to the appellant and the loan by the appellant to Mr. Fu formed one and the same transaction and that this transaction was essential to the appellant's business as a building contractor and it was carried out for trade wholly and exclusively. He further contends that there is a practice or custom among building contractors of borrowing and lending money not for profit but as an activity ancillary to their own business. In other words Mr. Hills' contention is that the loan to Mr. Fu is a bad debt incurred in the business and is deductible under section 14(1)(d) of the Income Tax Ordinance (Cap. 166).

Leave was granted to the appellant to call evidence relating to the practice or custom of building contractors of borrowing and lending money not for profit but as an activity ancillary to their main business.

Mr. Hills cited the case of *Reids Brewery Co. Ltd. v. Male*[1]. In that case the agreed facts are that:—

(1) it was the custom, habit and usual practice of manufacturing brewers, at any rate in London, to carry on the business of bankers and moneylenders as a branch or adjunct of their brewing business, such business being strictly carried on with the customers and connections of the brewery;

(2) the profits of the brewery were largely increased by the addition of the banking and moneylending business and the loans were necessary to enable the appellants to realize profits.

The Court held that on the facts above stated the appellants must be taken to have carried on one business only, that the money advanced to customers was used in the business and not capital invested and that the appellants were entitled to the deduction claimed.

Now, is there any evidence that there is a practice or custom among building contractors in Singapore of lending money not for profit but as an activity ancillary to their main business? The appellant called two

witnesses. One of them, Yong Nam Seng, a Director of Woh Hup & Co. Ltd., Building Contractors, said :—

"As a firm we have to borrow money on occasions. We usually borrowed from Banks. If that is not possible we borrowed from friends or other building contractors ..... If we borrow from a friend or another building contractor we do not give security, it is all temporary, two months or three months. When we have money and when we are approached by people from whom we had borrowed in the past we would lend — temporary loans, no interest, no security ..... We made advances to sub-contractors. I think this practice of lending and borrowing is usual with other building contractors in Singapore. We lend money only to people who lent us money in the past, this is a sort of reciprocal arrangement."

The other witness, Tham Poh Leong, Manager and Partner of Central Construction Co. since 1945 said in examination-in-chief :—

"Central Construction Co. doing building construction work. In the course of our business we have occasion to borrow money ..... We usually borrowed from our Bank on security. If Bank would not lend any more money we had to go to friends and asked for a temporary loan. So far we have borrowed from friends who are not building contractors. I think other building contractors also have to borrow money as they need big capital. The money that we borrowed from friends would be for a few months — three or four months."

In cross-examination he said :—

"We do lend money to friends, small sums, maximum $2,000 to $3,000. I would get the money from my firm and that is debited to my account with the firm and I would lend the money. Any loss incurred would be my personal loss and not my Company's loss.

Loans to friends indirectly connected with our business. Lending to friends is not an essential part of my firm's business ..... ".

In my opinion the evidence adduced before this Court does not prove such a practice or custom. Furthermore the present case is not on all fours with the *Reids Brewery case*. In the Brewery case the brewers only lent money to their own customers. In the present case the money was lent by the appellant to a stranger who was not even connected with the building trade.

I agree entirely with the decision of the Board of Review that the loan made by the appellant to Mr. Fu was not an essential part of the appellant's business nor was it essentially necessary to his business and that it is not an outgoing or expense wholly and exclusively incurred in the production of income for the business.

The result is that this appeal is dismissed with costs.

Appeal dismissed.

Solicitors : *Donaldson & Burkinshaw.*

NG HUI LIP & ANOR. v. CHAN HWA CHENG & ORS.

[O. C. J. (Smith J.) September 25, 1957]

[K. L. — Civil Suit No. 31 of 1957]

Practice — Security for costs — Plaintiffs resident in Singapore — Application for order that plaintiffs give security for costs — Court's discretion — Civil Procedure Code (Cap. 7), s. 369(i).

In this case the defendants applied to the Court for an order that the plaintiffs to give security for the payment of costs as the plaintiffs were partners in a firm which is not registered in the Federation and had given Singapore addresses. It was argued on behalf of the plaintiffs that on the authority of **Coldham v. Raub Australian Gold Mining Co. Ltd.**(1) no security for costs should be required from a plaintiff residing in Singapore and suing in the Supreme Court of the Federation, as the Reciprocal Enforcement of Judgments Ordinance provided for the enforcement of judgments of the Courts of the Federation in Singapore.

Held: the enforcement of a Federation judgment in Singapore was not automatic and therefore the mere fact that a plaintiff is resident in Singapore is not a ground for the Court refusing to order security for costs under section 369 of the Civil Procedure Code.

Cases referred to :—

(1) *Coldham v. Raub Australian Gold Mining Co. Ltd.* (1940) M.L.J. 50; (1939) F.M.S. L.R. 160.

(2) *Raeburn v. Andrews* L.R. 9 Q.B. 118.

(3) *In re Howe Machine (Fontaine's Case)* 41 Ch. D. 118.

(4) *Kohn v. Rinson & Stafford (Brod.) Ltd.* (1948) 1 K.B. 327.

CIVIL SUIT.

Ng Ek Teong for the plaintiffs.

R. H. V. Rintoul for the defendants.

Smith J. : — The two plaintiffs in this case are partners in a firm which is not registered in the Federation. Both plaintiffs have given Singapore addresses. Relying on section 369(i) of the Civil Procedure Code the defendants have applied to the Court for an order that the plaintiffs do give security for the payment of all costs incurred and likely to be incurred by the defendants.

It is not disputed that the power of the Court to order security is discretionary. The exercise of this power in relation to persons resident in the Colony was considered in detail by Poyser C.J. in *Coldham v. Raub Australian Gold Mining Co. Ltd.*(1). From the judgment of the learned Chief Justice it seems that he accepted the arguments put forward by plaintiff's counsel which is summarised as follows at page 51 :—

"Since the passing of the Judgments Extension Acts 1868 (31 and 32 Vict. C. 54) security for costs has not been required of a plaintiff residing in Scotland and suing in the High Court in England: **Raeburn v. Andrews**(2) and **In re Howe Machine Company**(3). **The Straits Settlements Reciprocal Enforcement of Judgments Ordinance**